

## In the Spotlight: The ACA and the Supreme Court – After the Decision

Unless you have somehow been able to avoid television, newspapers, and human interaction of any kind, you have likely heard that the Supreme Court reached a decision on the constitutionality of various parts of the Affordable Care Act (ACA). Much to the surprise of many and the relief of others, ACA was largely upheld and unchanged. While a slim, 5-4 majority of Justices upheld the individual mandate, a tenant of the Medicaid expansion was altered. For insurers, the decision meant full steam ahead as the Supreme Court upheld the entire law.

### The Decision

Though it is widely speculated that the decision was privately reached by the Justices shortly after the oral arguments heard in late March and the first written opinions likely circulated in May, the decision was not made public until June 28, 2012. No cameras are allowed at the Court, although audio is available after the decision has been read. This has the potential to, and occasionally does, lead to a fair amount of confusion. The day of the ACA decision was no exception and led to some temporarily misinformed reports. However, given a few days and the opportunity to review the decision and dissent, below are the details of the outcome from the Court.

### Individual Mandate

Five Justices held the [individual mandate](#) (“the mandate”) to be constitutional. However, interestingly, the mandate was not held constitutional under the Commerce Clause of the constitution, as argued by the Administration. Chief Justice Roberts, as the deciding vote and most senior member of the Supreme Court, wrote the opinion upholding the individual mandate as a tax, under the Tax Clause of the constitution. The other four concurring Justices (Justices Sotomayor, Breyer, Ginsburg, and Kagan) voted to uphold and maintained the mandate as a penalty based on the Commerce Clause, but agreed to the altered definition of the mandate as a tax, as well. The four dissenting Justices (Justices Thomas, Scalia, Alito, and Kennedy), dissented to uphold the mandate as a penalty and held the mandate was not severable from the rest of the law, essentially striking the entire ACA. Dissenters voted such because Congress did not pass the mandate as a tax and the Administration did not defend the mandate as a tax. Because the mandate was upheld, severability was not at issue, meaning that the law was left in tact.

### Medicaid Expansion

The [Medicaid](#) expansion outlined in ACA was upheld, but with a new caveat: the money for the existing Medicaid program may not be put at risk for states that choose not to participate in the expansion. ACA directs states to expand eligibility to childless adults and families up to 133% of the federal poverty line in 2014 or risk losing all federal assistance for state Medicaid programs. Current state Medicaid standards can vary, but the minimum threshold to receive federal funding is for families (or single parents) with dependent children up to 100% of the federal poverty line. A vast majority – seven Justices – agreed that the Medicaid expansion as outlined in the law was unconstitutional. The remedy agreed upon by the majority drew less support; five Justices voted in favor of circumscribing the Secretary of the US Department of Health and Human Services’ (HHS) enforcement authority. In other words, the Justices decided that, if states opt out of the Medicaid expansion, they should lose only the money allocated to the expansion – not the entire program. This essentially renders the Medicaid expansion optional.

## Vote Breakdown of the Court's Decision

Outcome	For	Against
Court has jurisdiction to decide case now	9	0
Mandate is a constitutional exercise of Congress' power to tax	5	4
Medicaid expansion violates Congress' spending clause power as unconstitutionally coercive of states because all existing Medicaid funds at risk and states not given adequate notice to voluntarily consent	7	2
Remedy is to limit HHS Secretary's power to withhold existing federal Medicaid funds for state non-compliance with Medicaid expansion	5	4

SOURCE: *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 587 U.S. \_\_\_\_ (2012).

The North Carolina legislature and Governor will face a decision in the near future about whether or not to participate in the Medicaid expansion. The current Medicaid program in North Carolina covers: infants, children, and families; aged, blind, and disabled; some long-term care; and supplements Medicare beneficiaries for two groups – those with limited income and working individuals with a disability. Under a full expansion, North Carolina would expect to cover up to 587,000 newly eligible Medicaid beneficiaries. If North Carolina opted out of the expansion, up to 149,000 have incomes above 100% FPL and, therefore, would be eligible for subsidies. This leaves about 438,000 North Carolinians ineligible for Medicaid or for any subsidy assistance.<sup>i</sup>

### BCBSNC Views

Blue Cross and Blue Shield of North Carolina has been operating on the assumption that the ACA would be upheld in the Court and, therefore, been implementing the provisions of the law full steam ahead. This puts us, as a company, in the unique and coveted position of not needing to scramble to implement the many provisions that will be required of insurers on and before January 1, 2014. We have long supported affordability and access for all North Carolinians and will continue to work toward achieving these goals. We have been and continue to be in position to move forward with full implementation based on the Court's decision.

This information has been prepared by Blue Cross and Blue Shield of North Carolina to assist our customers in understanding Health Care Reform. This publication is for information purposes only. It is not legal or tax advice. Please consult with your attorney or tax advisor for further advice. As regulations and other interpretive guidance are published, this information may change. We will continue to work with our customers going forward to provide updates and further assistance. U#7259aa

<sup>i</sup> Estimates based on July 2012 Urban Institute [report](#).